

Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-19 are pending in the application, with 1, 11, and 13 being the independent claims. Claim 4 is sought to be cancelled without prejudice to or disclaimer of the subject matter therein. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Objection to the Specification

Paragraph 24 on page 5 of the specification has been objected to for failing to indicate that "MAP" refers to "bandwidth allocation map" as provided by the DOCSIS standard specification. As such, the specification has been amended to clearly indicate that MAP refers to bandwidth allocation. This change is believed to introduce no new matter, and its entry is respectfully requested.

Claim Objections

In the Office Action, claim 1 was objected to because "a number field" in the Ack packet could refer to one of multiple types of numbers. (Office Action, p. 2). Applicants respectfully traverse this objection.

Although claim 1 may be a generic claim as it may encompass two or more embodiments, it is well established that generic claims are proper. See §804(e) of the Manual of Patent Examining Procedures. Thus, the objection to independent claim 1

is improper. Claims 2-10 depend from claim 1. For at least these reasons, objections to dependent claims 2-10 are also improper. Reconsideration and withdrawal of the objection are therefore respectfully requested.

Rejections under 35 U.S.C. § 101

Claims 13-19 have been rejected under 35 U.S.C. 101 as allegedly being directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

As outlined in §2106.1 of the Manual of Patent Examining Procedures:

USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material *per se* and hence nonstatutory.

To the extent that the Office Action implies that software is *per se* unpatentable, Applicants respectfully disagree. The Federal Circuit stated clearly and unambiguously that “[w]ithout question, software code *alone* qualifies as an invention eligible for patenting under these categories, *at least as processes.*” *Eolas Technologies Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1338-39 (Fed. Cir. 2005) (emphasis added). When referring to “these categories,” the court was clearly referring to the categories enumerated in 35 U.S.C. §101. In applying that statement to the facts in the *Eolas* case, the Federal Circuit was charged with determining whether software on a disk could be construed as a component of a patented invention

under 35 U.S.C §271(f). The court found that the software was patentable, both alone and as an article of manufacture because it was on a disk.

Claim 13 describes "A computer program product comprising a computer usable medium." A computer program product comprising a computer usable medium is an article of manufacture and as such is statutory under 35 U.S.C. 101.

For at least the above reasons, independent claim 13 is directed to statutory subject matter. Claims 14-19 depend from claim 13. For at least these reasons, dependent claims 14-19 are also directed to statutory subject matter. Reconsideration and withdrawal of the rejection are therefore respectfully requested.

Rejections under 35 U.S.C. § 102 and §103

Claims 1-2, 5-7, 10 and 13-17 stand rejected under 35 U.S.C. 102(e) as being allegedly anticipated by Bellaton et al. U.S. Patent 6,473,425 (Bellaton).

Claims 3, 11, and 19 stand rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Bellaton in view of Akgun et al. U.S. Patent 7,145,887 (Akgun).

Applicants seek to amend claim 1. Although the Applicants respectfully disagree with the Examiner's rejection of claim 1, it is moot in light of the current Amendment.

Claim 1, as amended, is canceled claim 4 rewritten in independent form. Because the Examiner indicated that claim 4 would be allowable if rewritten in independent form, claim 1 is believed to be in condition for allowance.

Applicants submit that dependent claims 2-3 and 5-10 are also in condition for allowance for at least the same reasons as independent claim 1 from which they depend, and further in view of their own respective features.

Applicants seek to amend claim 11. Although the Applicants respectfully disagree with the Examiner's rejection of claim 11, it is moot in light of the current Amendment. Claim 11 has been amended to include "wherein said cable modem operates to queue the new Ack packet in response to detecting that the old Ack packet has been transmitted before said replacing step is completed." For at least the reason, that this amendment adds subject matter from allowable claim 4 to claim 11, it is believed to place claim 11 in condition for allowance.

Applicants submit that dependent claim 12 is also in condition for allowance for at least the same reasons as independent claim 11 from which it depends, and further in view of their own respective features.

Applicants seek to amend claim 13. Although Applicants respectfully disagree with the Examiner's rejection of claim 13, it is moot in light of the current Amendment. Claim 13 has been amended to include "fourth computer readable program code means for queuing the new Ack packet in response to detecting that the old Ack packet has been transmitted before said replacing step is completed." For at least the reason that this amendment adds subject matter from allowable claim 4 to claim 13, it is believed to place claim 13 in condition for allowance.

Applicants submit that dependent claim 14-19 is also in condition for allowance for at least the same reasons as independent claim 13 from which it depends, and further in view of their own respective features.

Allowable Subject matter

Applicants extend their appreciation to the Examiner for the Examiner's early indication of allowable subject matter in claim 4.

Other Matters

The Applicants have received two versions of the present Office Action from the PTO. The first version had a mail date of 8/8/07, while the second version had a mail date of 10/12/07. The Office Actions are identical except for the mail dates and the Art Unit information. Therefore, it would appear that the second version of the office action was sent in error, and the present response is responsive to both of these office actions. Applicants request that the Examiner clarify this in the prosecution file history to avoid possible future confusion.

Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is
respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read "Michael D. Specht", written in a cursive style.

Michael D. Specht
Attorney for Applicants
Registration No. 54,463

Date: 11/7/07

1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600
718505_1.DOC